

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 2
August 2016

ALABAMA	SB 344 (Act No. 395)	ENACTED May 12, 2016 EFFECTIVE August 1, 2016
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Nonmonetary Eligibility

Provides that notwithstanding any provision of law, with respect to any week of unemployment beginning on or after May 1, 2015, benefits based on service in employment with a private company that provides direct services to schools may not be paid with respect to services rendered to an educational institution, when the services are performed by an individual employed by an employer primarily or exclusively engaged in the provision of its employees to perform work for educational institutions, for any week commencing during the period between two successive academic years or terms, or for any week which commences during an established and customary vacation period or holiday recess, if the individual performs services for the educational institution in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that such individual will perform the same or similar services for the educational institution in the period immediately following the vacation period or holiday recess (previously, for any week commencing during the period between two successive academic years or terms, or for any week which commences during an established and customary vacation period or holiday recess for the period that the individual does not perform his or her duties because of a holiday or weather).

HAWAII	HB 2722 (Act No. 70)	ENACTED and Effective June 17, 2016, or as otherwise stated
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Extensions and Special Programs

Creates a temporary program limited to Maui County to provide state additional benefits to unemployed workers as follows:

- “State additional benefits eligibility period” means the period beginning on September 4, 2016, and ending on October 28, 2017.
- An individual will be eligible to receive a payment of state additional benefits with respect to a week of unemployment provided that:

(1) The benefit year for the most recent initial claim filed by the individual begins on or after March 1, 2015;

(2) The individual had at least 2 quarters of insured employment in Maui County during the base period of the initial claim filed under (1);

(3) The individual exhausted regular benefits within the state additional benefits eligibility period;

(4) The individual filed an initial claim and filed continued claim certifications for state additional benefits during the state additional benefits eligibility period;

(5) The week of unemployment falls within the state additional benefits eligibility period;

(6) The individual is not receiving unemployment benefits under federal law or the laws of any other state, or any federal or federal-state extended benefits program or adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, during the same weeks within the state additional benefits eligibility period for which state additional benefits are claimed; and

(7) The individual has met all other conditions of eligibility that apply to regular benefits except that no individual will be required to serve a waiting period in the state additional benefits eligibility period.

- The weekly state additional benefits amount payable to an eligible individual for a week of total unemployment within the state additional benefits eligibility period will be an amount equal to the weekly benefit amount payable in the individual's current or most recently expired benefit year within the state additional benefits eligibility period.
- The maximum state additional benefits amount payable to any eligible individual during the state additional benefits eligibility period will be 13 times the individual's weekly state additional benefits amount.
- No state additional benefits will be payable for any week beginning prior to the state additional benefits eligibility period or for any week beginning after the state additional benefits eligibility period ends.
- Except when the result would be inconsistent with the Hawaii Revised Statutes, the provisions of Chapter 383, Hawaii Revised Statutes, which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, state additional benefits.
- No provision will apply when the balance of the unemployment compensation trust fund is below the adequate reserve fund.
- The additional program provisions are repealed on October 28, 2017.

Financing

- State additional benefits paid will be charged against the account of any of the individual's base period employers in the same manner as regular benefits were charged on the individual's current or most recently expired benefit year within the state

additional benefits eligibility period, and consistent with Section 383-65, Hawaii Revised Statutes.

- There is appropriated out of the general revenues of the state the sum of \$650,000 or so much thereof as may be necessary for fiscal year 2016-2017 to carry out the purposes of this program, effective July 1, 2016.
- The funds for state additional benefits payable will be withdrawn from the unemployment compensation trust fund. If necessary, additional moneys may be allocated from the state general fund and used for the payment of expenses incurred for the administration of state additional benefits.

ILLINOIS SB 2420
(P.A. 571)

ENACTED and EFFECTIVE July 15, 2016

Administration

Provides that the Director of the Illinois Department of Revenue may exchange information with the State Treasurer's Office and the Department of Employment Security for the purpose of implementing, administering, and enforcing the Illinois Secure Choice Savings Program Act.

Provides that small employers' use of automatic enrollment for employees in the Illinois Secure Choice Savings Program Act is subject to final rules from the U.S. Department of Labor. Utilization of automatic enrollment by small employers may be allowed only if it does not create employer liability under the federal Employee Retirement Income Security Act.

Provides that the Director of the Illinois Department of Employment Security will make information available to the State Treasurer's office and the Department of Revenue for the purpose of facilitating compliance with the Illinois Secure Choice Savings Program Act, including employer contact information for employers with 25 or more employees and any other information the Director deems appropriate that is directly related to the administration of this program.

NORTH CAROLINA SB 725 ENACTED and EFFECTIVE May 11, 2016
(CH 4)

Coverage

Provides that continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the new employer. Control may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise. Control is not affected by changes in the form of a business enterprise, reorganization of a business enterprise, or expansion of a business enterprise. (Previously, provided that a new employer shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business)

enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employer shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. The following assumptions apply in this subsection: (1) "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise. (2) A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control includes changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.)

Financing

Provides that any new employer that has continuity of control with an existing business enterprise will continue to be the same employer as the existing business enterprise as before the existence of the new employer. Any new employer with continuity of control will be assigned to the account of the existing business enterprise. Any new employer with continuity of control will not request or maintain an account other than the account of the existing business enterprise. If a new employer receives a new account and the Division subsequently finds that such new employer has continuity of control with an existing business enterprise, the Division the annual tax rates will be recalculated based on the combined annual account balances of the new employer and the existing business enterprise.

WISCONSIN

AB 819
(Act No. 334)

ENACTED March 30, 2016
EFFECTIVE April 3, 2016,
or as otherwise noted

Administration

Allows documents to be electronically delivered or mailed to the last-known address of each party (previously mailed).

Appeals

Repeals the following provision: Unless a party has filed a timely request for review of the decision of an appeal tribunal by the Labor and Industry Review Commission or has commenced a timely action for the judicial review of the decision of the Commission, the state Department of Workforce Development may set aside or amend any appeal tribunal decision adverse to a claimant that has been issued under Section 108.09, 1995 statutes, within the 4-year period immediately preceding January 4, 1998, or may reverse, modify or set aside any decision of the

Commission adverse to a claimant that has been issued under Section 108.09, 1995 statutes, within the 4-year period immediately preceding January 4, 1998, if the Department finds that the benefits paid or payable to the claimant have been affected by wages earned by the claimant which have not been paid, and the Department is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

Amends the provisions concerning procedures to follow when an appellant fails to appear at a hearing and the appellant has submitted to the appeal tribunal a written explanation for failing to appear at the hearing.

Amends the provisions concerning procedures to follow when a respondent fails to appear at a hearing when the appellant is present, and the respondent has submitted to the appeal tribunal a written explanation for failing to appear at the hearing.

Allows the Department to also file timely petitions for review of the appeal tribunal decision by the Commission.

Provides that, if departmental records relating to benefits claims are admitted in any hearing before an appeal tribunal and made the basis of a decision, the record may constitute substantial evidence under Section 108.09(7)(f) of the Wisconsin Statutes (previously, Section 102.23(6) of the state Worker's Compensation law). (Effective August 1, 2016.)

Provides that all testimony at any hearing will be recorded by electronic means (previously, taken down by a stenographer or recorded by a recording machine) and a copy of the electronic recording furnished to the parties upon payment of any fee required. Among other things, the Commission will use the electronic recording of the hearing in its review of the decision of an appeal tribunal.

Provides that any party that is not the Department may commence an action for the judicial review of a decision of the Commission after exhausting the remedies provided. The Department may commence an action for the judicial review of a Commission decision, but the Department is not required to have been a party to the proceedings before the Commission or to have exhausted the remedies provided. In an action commenced by a party that is not the Department, the Department will be a defendant and will be named as a party in the complaint commencing the action. If a plaintiff fails to name either the Department or the Commission as defendants and serve the Commission as required, the court will dismiss the action (effective August 1, 2016). (Previously, the Department or either party may commence action for the judicial review of a decision of the Commission after exhausting the remedies provided if the party or the Department has commenced such action in accordance with Section 102.23 of the state Worker's Compensation law within 30 days after a decision of the Commission is mailed to a party's last-known address.)

Provides that any judicial review will be confined to questions of law and will be in accordance with this paragraph. In any such judicial action, the Commission may appear by any licensed attorney who is a salaried employee of the Commission and has been designated by it for that purpose, or, at the Commission's request, by the state Department of Justice. In any such

judicial action, the Department may appear by any licensed attorney who is a salaried employee of the Department and has been designated by it for that purpose (effective August 1, 2016). (Previously, any judicial review will be confined to questions of law, and the provisions of Chapter 102 with respect to judicial review of orders and awards will likewise apply to any decision of the Commission reviewed. In any such judicial action, the Commission may appear by any licensed attorney who is a salaried employee of the Commission and has been designated by it for this purpose, or, at the Commission's request, by the state Department of Justice.)

Establishes, effective August 1, 2016, provisions for the judicial review of unemployment insurance decisions issued by the Commission as follows:

- The findings of fact made by the Commission acting within its powers will, in the absence of fraud, be conclusive. The order of the Commission is subject to review only as provided in this subsection. Within 30 days after the date of an order made by the Commission, any party or the Department may, by serving a complaint and filing the summons and complaint with the clerk of the circuit court, commence an action against the Commission for judicial review of the order. In an action for judicial review of a Commission order, every other party to the proceedings before the Commission will be made a defendant. The Department will also be made a defendant if the Department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.
- Except as otherwise provided, the proceedings will be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the Department, the proceedings will be in the circuit court of the county where a defendant other than the Commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after notice and a hearing, so orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.
- A complaint will be served with an authenticated copy of the summons and will state the grounds upon which a review is sought. Service upon the Commission or its authorized agent constitutes complete service on all parties, but there will be left with the person so served as many copies of the summons and complaint as there are defendants, and the Commission will mail one copy to each other defendant.
- Each defendant will serve its answer within 20 days after the service upon the Commission, which answer may ask for the review of the order referred to in the complaint.
- Within 60 days after appearing in an action for judicial review, the Commission will make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the Commission's order and findings. Such return of the Commission, when filed in the office of the clerk of the circuit court, will constitute a judgment roll in the action. After the Commission makes return of the judgment roll to the court, the court will schedule briefing by the parties. The court may confirm or set aside the Commission's order, but may set aside the order only upon certain grounds.
- The court will disregard any irregularity or error of the Commission or the Department unless it appears that a party was damaged by that irregularity or error.

- The record in any case will be transmitted to the Commission within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.
- If the Commission's order depends on any fact found by the Commission, the court will not substitute its judgment for that of the Commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the Commission's order and remand the case to the Commission if the Commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.
- Any party aggrieved by a judgment entered upon the review of any circuit court order may file an appeal to the court of appeals.
- The clerk of any court rendering a decision affecting a decision of the Commission will promptly furnish all parties a copy of the decision without charge.

Provides that no fees may be charged by the clerk of any circuit court for the performance of any service required, except for the entry of judgments and for certified transcripts of judgments. In proceedings to review an order, costs as between the parties will be in the discretion of the court. Notwithstanding Section 814.245 of the Wisconsin Statutes, no costs may be taxed against the Commission or the Department (previously, notwithstanding Sections 102.26 (1) and 814.245, upon review of a decision of the Commission, costs as between the parties will be in the discretion of the court, but no costs may be taxed against the Department).

Provides that the Department may be a party in any proceedings before an appeal tribunal.

Provides that the employing unit may commence an action for the judicial review of a Commission decision, provided the employing unit has exhausted the remedies provided. The Department may commence an action for the judicial review of a Commission decision, but the Department is not required to have been a party to the proceedings before the Commission or to have exhausted the remedies provided under this section. In an action commenced by a party that is not the Department, the Department will be a defendant and will be named as a party in the complaint commencing the action. If a plaintiff fails to name either the Department or the Commission as defendants and serve them as required, the court will dismiss the action. The scope of judicial review, and the manner thereof insofar as applicable, will be the same as that provided in Section 108.09(7) (effective August 1, 2016). (Previously, the Department or the employing unit may commence action for the judicial review of a Commission decision, provided the Department, or the employing unit, after exhausting the remedies, has commenced such action within 30 days after such decision was mailed to the employing unit's last-known address. The scope of judicial review, and the manner thereof insofar as applicable, will be the same as that provided in Section 108.09(7). In an action commenced by an employing unit, the Department will be an adverse party under Section 102.23(1) (a) and will be named as a party in the complaint commencing the action.)

Provides that any determination by the Department or any decision by an appeal tribunal or by the Commission is conclusive with respect to an employing unit unless the Department or the employing unit (previously, it) files a timely request for a hearing or petition for review.

Coverage

Repeals Section 102.07(8)(d) of the state Worker's Compensation Act and Section 111.327 of the Wisconsin Legislative Statutes providing that any employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects, or engaged in the painting or drywall finishing of buildings or other structures who willfully and with intent to evade any requirement of Chapter 102 misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee will be fined \$25,000 for each violation. (Effective October 2, 2016.)

Provides that any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee will, for each incident, be assessed a penalty in the amount of \$500 for each employee who is misclassified, but not to exceed \$7,500 per incident. The following will be considered in making a determination of the employer misclassifying or attempting to misclassify such individual: whether the employer was previously found to have misclassified an employee in the same or a substantially similar position, and whether the employer was the subject of litigation or a governmental investigation relating to worker misclassification and the employer, as a result of that litigation or investigation, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee. (Effective October 2, 2016.)

Provides that any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who, through coercion, requires an individual to adopt the status of a nonemployee will be assessed a penalty in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year. (Effective October 2, 2016.)

Provides that any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who, after having previously been assessed a misclassification administrative penalty by the Department, knowingly and intentionally provides false information to the Department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee will be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The Department may refer violations for prosecution by the state Department of Justice or the district attorney for the county in which the violation occurred. (Effective October 2, 2016.) (Previously, any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who willfully, provides false information to the Department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee will be fined \$25,000 for each violation.)

Excludes from the definition of "employer" a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under Section 46.272(7) of the Wisconsin Statutes as to any individual performing services for a person receiving long-term support services under Section 46.272(7)(b).

Provides that an individual who is an officer, employee, member, manager, partner, or other responsible person holding at least 20 percent of the ownership interest of a corporation, limited liability company, or other business association, and who has control or supervision of, or responsibility for, filing any required contribution reports or making payment of contributions, and who willfully fails to file such reports or to make such payments to the Department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, the corporation, limited liability company, or other business association is unable to pay such amounts to the Department. Ownership interest of a corporation, limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, limited liability company, or other business association of which the corporation, limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The personal liability of such officer, employee, member, manager, partner, or other responsible person survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation, limited liability company, or other business association and will be set forth in a determination or decision (added the phrases "partner, or other responsible person", and "or other business association").

Financing

Requires the Department to charge to the fund's balancing account regular benefits paid and the state's share of extended benefits paid to an employee that are otherwise chargeable to the account of a contributing employer, if the employee voluntarily terminates employment with that employer because of the illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

Provides that the assessments imposed on employers in the construction industry or engaged in the painting of drywall finishing of buildings or other structures for misclassifying or attempting to misclassify employees, or requiring an individual to adopt the status of a nonemployee will be deposited in the unemployment program integrity fund. (Effective October 2, 2016.)

Provides that, effective October 2, 2016, the Department may terminate any election of reimbursement financing as of the close of any calendar year if any of the following applies:

1. The employer has failed to make the required reimbursement payments.
2. The employer has failed to pay the required assessments authorized by subsection (7) or Section 108.155.
3. The employer no longer satisfies the requirements of subsection (4).
4. Section 108.16(8) applies with respect to the employer.

Provides that, if an Indian tribe or tribal unit fails to pay, among other things, required assessments within 90 days of the time that the Department transmits to the tribe a final notice of delinquency, (1) the federal Internal Revenue Service and the federal Department of Labor will be immediately notified of that failure, (2) any valid election of reimbursement financing is terminated as of the end of the current calendar year, and (3) the Department may consider the Indian tribe not to be an employer and may consider services performed for the tribe not to be employment. (Effective October 2, 2016.)

Establishes provisions concerning the liability of reimbursable employers as a result of identity theft as follows:

On October 2, 2016, \$2,000,000 will be set aside in the balancing account for accounting purposes. On an ongoing basis, the amounts allocated to the reimbursable employers' accounts will be tallied and deducted from the amount set aside plus any interest. On each June 30, beginning with June 30, 2016, the fund's treasurer will determine the current result of those calculations and will determine the amount that was allocated to the reimbursable employers' accounts because of an erroneous payment resulting from a false statement or representation about an individual's identity and the employer was not at fault for the erroneous payment. Based on those calculations and the determined amount allocated to the account, the reimbursable employer will be assessed the sum which will be imposed or the assessment will be postponed. The rate of an assessment will be determined for a given calendar year. Reimbursable employers will be billed the imposed assessment in September of each year. Among other things, a reimbursable employer's election of reimbursement financing may be terminated if delinquent in paying the assessment. (Effective October 2, 2016.)

Creates provisions concerning contributions to the administrative account and unemployment interest payment and program integrity funds as follows:

- (a) Provides that, except as provided in paragraph (b), each employer, other than an employer who finances benefits by reimbursement in lieu of contributions under Sections 108.15, 108.151, or 108.152 will, in addition to other contributions payable under Section 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under Section 108.18 (9) for that year. Assessments under this paragraph will be deposited in the unemployment program integrity fund.
- (b) The levy prescribed under paragraph (a) is not effective for any year unless the Department, no later than the November 30 preceding that year, publishes a class 1 notice under Chapter 985 giving notice that the levy is in effect for the ensuing year. The Department will consider the balance of the unemployment reserve fund before prescribing the levy under paragraph (a). The secretary of workforce development will consult with the council on unemployment insurance before the Department prescribes the levy under paragraph (a).
- (c) Notwithstanding paragraph (a), the Department may, if it finds that the full amount of the levy is not required to effect the purposes specified in subsection (1s)(b) for any year, prescribe a reduced levy for that year and in such case will publish in the notice under paragraph (b) the rate of the reduced levy.

Provides that any excess amounts collected from the 75 percent assessment to pay interest due on advances from the federal unemployment account under Title XII of the Social Security Act will be used to pay interest owed in subsequent years on such advances. If additional interest obligations to pay interest due are unlikely, the excess amounts will be transferred to the balancing account of the fund, the unemployment program integrity fund, or both in amounts determined by the Department (previously, will transfer the excess to the balancing account of the fund).

Creates a separate, nonlapsible trust fund designated as the unemployment program integrity fund, and provides which payments, amounts, and assessments will be deposited into the fund as follows:

(1) All amounts collected under Section 108.04(11)(bh)--15 percent penalty other than the amounts required to be deposited in the fund under section 108.16(6)(n); (2) assessments levied and deposited into the unemployment program integrity fund under subsection (1f)--the yearly assessment equal to the lesser of 0.10 percent of the employer's payroll or the solvency contribution for that year; (3) amounts transferred under subsection (1m)--the assessment to pay interest due on advances; and (4) assessments under section 108.221 (1) and (2)--administrative fees for misclassification and coercing an individual to adopt the status of nonemployee.

Provides that "contribution" also includes the identity theft assessment imposed on reimbursable employers. (Effective October 2, 2016.)

Provides that the fund's balancing account will be charged with benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of Sections 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and paragraph (a), (c), (cg), (e), (L), (q), (s), or (t) applies. (Added (cg).)

Monetary Entitlement

Repeals the provision indicating that each eligible employee shall be paid benefits for each week of total unemployment commencing on or after January 4, 2009, and before January 5, 2014, at the weekly benefit rate specified. Also repeals the benefit rate schedule of quarterly wages and corresponding weekly benefits rates indicating the minimum weekly benefit rate of \$54, and the maximum weekly benefit rate of \$363.

Repeals from the Wisconsin Statutes and publishes on the state's Internet site the provision indicating that each eligible employee shall be paid benefits for each week of total unemployment commencing on or after January 5, 2014, at the weekly benefit rate specified. Also repeals from the Wisconsin Statutes and publishes on the state's Internet site the benefit rate schedule of quarterly wages and corresponding weekly benefits rates as calculated. Using the calculation formula in the Wisconsin Statutes, the minimum weekly benefit rate is calculated at \$54, and the maximum weekly benefit rate is calculated at \$370.

Repeals the provisions concerning the semiannual adjustment of maximum and minimum benefit rates indicating the method of computation was semiannually as a percentage of the average

weekly wage covered in employment in 12 months ending 6 months before the effect date that the maximum benefit amount was 662/3 of the average wages per average week and the minimum benefit amount was 15 percent of the maximum rate and the effective date of the new amounts were January 1 and July 1, which were based on the average wages per average week of the preceding base year. Repeals the provisions concerning the suspension of these adjustments.

Nonmonetary Eligibility

Repeals Section 108.02(24g) of the Wisconsin Statutes which provided “suitable work” has the meaning specified by the Department by rule under section 108.14(27).

Provides that, except as provided in Section 108.062(10), if an employee is absent from work for 16 hours or less in the first week of his or her leave of absence or in the week in which his or her employment is suspended or terminated due to the employee’s unavailability for work with the employer or inability to perform suitable work otherwise available with the employer, the employee’s eligibility for benefits for that week will be determined under Paragraph 108.04(1)(bm) (previously, except as provided in Subdivision 2 and Section 108.062(10), if an employee’s employment is suspended by the employee or the employee’s employer or an employee is terminated by the employee’s employer, due to the employee’s unavailability for work or inability to perform suitable work otherwise available with the employee’s employer, or if the employee is on a leave of absence, the employee is ineligible for benefits while the employee is unable to work or unavailable for work).

Provides that a claimant will, when the claimant first files a claim for benefits and during each subsequent week the claimant files for benefits, inform the Department whether he or she is receiving social security disability insurance payments, as defined in Subsection (12)(f)2m (previously receiving social security disability insurance benefits under 42 USC Chapter 7, Subchapter II). (Retroactive to January 5, 2014.)

Provides that, except as otherwise provided, an individual is ineligible for benefits for each week in the entire month in which a social security disability insurance payment is issued to the individual. This prevents the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual’s ability to work. (Previously, provided that any individual who actually receives social security disability insurance benefits under federal law in a given week is ineligible for benefits paid or payable in that same week.) (Effective retroactive to January 5, 2014.)

Defines the phrase “social security disability insurance payment” to mean a payment of “social security disability insurance benefits” as defined in federal law. (Effective retroactive to January 5, 2014.)

Provides that, in the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month. Following a cessation of social security disability insurance payments to an

individual, and upon the individual again being issued a social security disability insurance payment, the individual is ineligible for benefits for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month. Following a cessation of social security disability insurance payments, an individual may be eligible for benefits, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment. (Effective retroactive to January 5, 2014.)

Provides that any individual who receives a temporary total disability payment or a permanent total disability payment for a whole week under state or any federal law that provides for payments on account of a work-related injury or illness as provided in state law will be ineligible for benefits paid or payable for that same week, unless otherwise provided by federal law. A temporary total disability payment, a temporary partial disability payment, or a permanent total disability payment received by an individual for part of a week will be treated as wages for purposes of eligibility for benefits for partial unemployment. (Effective May 1, 2016.) (Adds “or a permanent total disability payment”.)

Provides that any individual who receives a temporary total disability payment or a permanent total disability payment for a whole week under the workers’ compensation program or under any federal law that provides for payments on account of a work-related injury or illness analogous to those provided under the workers’ compensation program will be ineligible for benefits paid or payable for that same week under the unemployment compensation law unless otherwise provided by federal law. A temporary total disability payment, a temporary partial disability payment, or a permanent total disability payment under those workers’ compensation provisions received by an individual for part of a week will be treated as wages for purposes of eligibility for benefits for partial unemployment. (Effective May 1, 2016.)

Provides that an employee who voluntarily terminates work has good cause and is not ineligible to receive benefits if the employee terminated his or her work but had no reasonable alternative because of the verified illness or disability of the employee (previously, an employee who voluntarily terminates work is not ineligible to receive benefits if the employee terminated his or her work but had no reasonable alternative because the employee was unable to do his or her work, or that the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave; however if the employee is unable to work or unavailable for work, the employee is ineligible to receive benefits while such inability or unavailability continues).

Provides that an employee who terminates work has good cause and is not ineligible to receive benefits if the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

Provides that an employee who terminates work has good cause and is not ineligible to receive benefits if the employee accepted work that the employee could have failed to accept

(previously, to accept with good cause) under Section 108.04(8) and terminated such work on the same grounds (previously, terminated such work with the same good cause) and within the first 30 calendar days after starting the work, or that the employee accepted work which the employee could have refused under Section 108.04(9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same grounds (previously, the same good cause) for voluntarily terminating work if the employee could have failed to accept the work under Section 108.04(8)(d) when it was offered, regardless of the reason articulated by the employee for the termination. (Effective May 1, 2016.)

Provides that an employee who fails to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer has good cause for such failure, and the employee is not ineligible to receive benefits if the work offered would not be considered “suitable work.” (Effective May 1, 2016.)

Provides that, with respect to the first 6 weeks after the employee became unemployed, “suitable work” means work to which all of the following apply: the work does not involve a lower grade of skill than that which applied to the employee on one or more of his or her most recent jobs, and the hourly wage for the work is 75 percent or more of what the employee earned on the highest paying of his or her most recent jobs. (Previously, provided that an employee will have good cause for failing to accept suitable work when offered and returning to work with a former employer that recalls the employee with 52 weeks after last worked, regardless of the reason articulated by the employee for the failure, if the Department determines that the failure involved work at a lower grade of skill pay or significantly lower rate of pay than applied to the employee on one or more recent jobs, and that the employee had not yet had a reasonable opportunity, in view of labor market conditions and the employee’s degree of skill, but not to exceed 6 weeks after the employee became unemployed, to seek a new job substantially in line with the employee’s prior job skill and rate of pay. (Effective May 1, 2016.)

Provides that, with respect to the 7th week after the employee became unemployed and any week thereafter, “suitable work” means any work that the employee is capable of performing, regardless of whether the employee has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the Department. (Effective May 1, 2016.)

Repeals Section 108.04(8)(e) of the Wisconsin Statutes providing that, if a failure to accept suitable work has occurred with good cause, but the employee is unable to work or unavailable for work, the employee will be ineligible for the week in which such failure occurred and while such inability or unavailability continues.

Provides that an employee will have good cause for failing to accept suitable work only if the failure related to the employee’s personal safety, the employee’s sincerely held religious beliefs, or an unreasonable commuting distance, or if the employee had another compelling reason that would have made accepting the offer unreasonable. (Effective May 1, 2016.)

Overpayments

Provides that, with respect to fraudulent claims, “conceal” means to intentionally mislead (previously, mislead or defraud) the Department by withholding or hiding information or making a false statement or misrepresentation.

Provides that a claimant has a duty of care to provide an accurate and complete response to each inquiry in connection with his or her receipt of benefits. The following factors will be considered in determining whether a claimant intended to mislead the Department:

- a. Whether the claimant failed to read or follow instructions or other communications of the Department related to a claim for benefits.
- b. Whether the claimant relied on the statements or representations of persons other than an employee of the Department who is authorized to provide advice regarding the claimant’s claim for benefits.
- c. Whether the claimant has a limitation or disability and, if so, whether the claimant provided evidence to the Department of that limitation or disability.
- d. The claimant’s unemployment insurance claims filing experience.
- e. Any instructions or previous determinations of concealment issued or provided to the claimant.
- f. Any other factor that may provide evidence of the claimant’s intent.

Provides that nothing requires the Department, when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled.

Provides, effective October 2, 2016, that to correct any erroneous payment not so adjusted from the account of an employer who is subject to reimbursement financing, the Department will do one of the following:

- a. If recovery of an overpayment is permitted under Section 108.22(8)(c), credit to the account benefits which would otherwise be payable to, or cash received from, the employee, unless Subdivision 4. c. applies.
- b. If recovery of an overpayment is not permitted under Section 108.22(8)(c), restore the proper amount to the employer’s account and charge that amount in accordance with Section 108.07(5).

Adds Subdivision 108.04 (13) (d) 4. c. providing that, if the erroneous payment resulted from a false statement or representation about an individual’s identity and the employer was not at fault for the erroneous payment, restore the proper amount to the employer’s account and reimburse the balancing account by crediting to it benefits that would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment. (Effective October 2, 2016.)